\_\_\_\_\_\_\_\_\_\_\_\_\_, 2024

VIA EMAIL

[*Respondent*] \_\_\_\_\_\_\_\_\_\_\_\_\_\_

c/o \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Email: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Subject: Exclusive Negotiating Agreement for PPA Negotiation for the [*Project Name*]

Dear [*Respondent*]:

Marin Clean Energy, a California joint powers authority (“**MCE**”) is pleased to confirm that the “**Offer**” (as defined below) submitted by [*Respondent*] (“**Respondent**”) for the [*Project Name*] (“**Project**”) in MCE’s 2024 Open Season procurement process (“**Open Season 2024**”) has been placed on a shortlist with MCE for further negotiations. If you wish to proceed with negotiations for a power purchase agreement (“**PPA**”) under the terms and conditions set forth in this letter (the “**Exclusive Negotiating Agreement**”), please countersign where provided below and return it to [rfo@mcecleanenergy.org](mailto:rfo@mcecleanenergy.org) no later than seven (7) business days after the date set forth above. As used herein, “**Offer**” shall mean the Term Sheet, attached hereto as Exhibit A.

**I.**  **Representations and Warranties**

In accepting a position on the shortlist, Respondent hereby makes the following representations and warranties:

1. Respondent has not engaged and will not engage in oral, written, or any other form of communication with any other entity submitting an offer to MCE in response to the Open Season 2024 with respect to the terms of Respondent’s Offer or such other entities’ offer(s) in the Open Season 2024; and
2. Respondent will promptly notify MCE of any material change in circumstances that may affect Respondent’s ability to fulfill the terms of its Offer, at any time from Offer submission until MCE’s acceptance of the Offer, as evidenced by MCE’s execution of PPA(s), or Respondent’s withdrawal of the Offer.

Respondent understands and agrees that any breach by Respondent of the above representations and warranties is grounds for immediate disqualification of Respondent from the Open Season 2024.

**II.**  **Exclusivity**

In consideration of its shortlist position, Respondent hereby grants MCE exclusivity with respect to the Offer from the date of Respondent’s signature below until the occurrence of the earlier of the following events (the “**Exclusivity Period**”):

1. MCE’s termination of negotiations of the PPA;
2. Ninety (90) days after the date of Respondent’s execution of this Exclusive Negotiating Agreement.

The Exclusivity Period shall be extended automatically if the parties are continuing to negotiate in good faith with respect to the Offer; provided, however, that after the initial ninety (90) day period, Respondent may terminate the Exclusivity Period on ten (10) business days’ prior written notice to MCE. Respondent agrees that during the Exclusivity Period it shall not enter into any agreements nor otherwise discuss the sale of output from the Project associated with the Offer with any third party under which it or its affiliates may agree, conditionally or unconditionally, to enter into a PPA for the output of the Project associated with the Offer.

As a condition of MCE’s obligations under this Exclusive Negotiating Agreement, Respondent agrees to provide MCE with a deposit in the form of either (a) cash or (b) a letter of credit in a form reasonably acceptable to MCE in the amount of [\_\_\_\_\_\_\_\_\_\_] Dollars ($XXX,XXX)[[1]](#footnote-1) (the “**Shortlist Deposit**”) within three (3) business days of Respondent’s countersignature of this Exclusive Negotiating Agreement.

“**Letter of Credit**” means an irrevocable standby letter of credit, in a form reasonably acceptable to MCE, issued either by (i) a U.S. commercial bank, or (ii) a U.S. branch of a foreign commercial bank that, in either case, meets the following conditions: (A) it has sufficient assets in the U.S. as determined by MCE, and (B) it is acceptable to MCE in its sole discretion. The issuing bank must have a credit rating of at least A- from S&P or A3 from Moody’s, with a stable or better outlook designation. All costs of the Letter of Credit shall be borne by Respondent. The Letter of Credit should be sent by overnight delivery to:

Marin Clean Energy

Attn: Power Resources

1125 Tamalpais Avenue

San Rafael, CA 94901

With electronic copy to: [rfo@mcecleanenergy.org](mailto:rfo@mcecleanenergy.org)

Electronic delivery will be equivalent to physical delivery and notice given by email shall be effective upon actual receipt if received during the recipient’s normal business hours, or at the beginning of the recipient’s next business day after receipt if not received during the recipient’s normal business hours.

Wire instructions will be provided to Respondent for cash deposits.

The Shortlist Deposit will be promptly returned to Respondent in its entirety under one or more of the following conditions: (i) following execution of the PPA and delivery of the required security in accordance with the terms of such PPA, (ii) MCE’s rejection of Respondent’s Offer following shortlist selection, (iii) failure of both MCE and Respondent to agree on the terms of the PPA, or (iv) MCE’s termination of the Open Season 2024 process. Notwithstanding the foregoing, Respondent hereby acknowledges and agrees that Respondent will forfeit its Shortlist Deposit and MCE shall have the right to draw on and retain the Shortlist Deposit in its entirety, if (A) it is determined that Respondent made any material misrepresentations in the Offer, (B) Respondent fails to comply with the terms and conditions of this Exclusive Negotiating Agreement or the Open Season 2024, including the Open Season 2024 protocol, (C) Respondent unilaterally withdraws the Offer or attempts to materially modify the terms of its Offer during to the Exclusivity Period without the consent of MCE, or (D) during the Exclusivity Period, Respondent enters into discussions with any third party under which such third party, or any of such third party’s affiliates may agree, conditionally or unconditionally, to enter into a PPA for the output associated with the Offer.

The parties agree that neither MCE, on the one hand, nor Respondent on the other hand, will be obligated to enter into any transaction contemplated by the Offer or the Open Season 2024 until and unless a final negotiated PPA is complete to the satisfaction of all parties thereto, and such PPA has been submitted for, and received, approval from the Board of Directors of MCE, as applicable, and is fully executed by the parties thereto.

**IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES AND/OR REPRESENTATIVES BE LIABLE FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR EXEMPLARY DAMAGES UNDER OR IN RESPECT TO THIS EXCLUSIVE NEGOTIATING AGREEMENT.**

Very truly yours,

**MARIN CLEAN ENERGY**

**a California joint powers authority**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Acknowledged and Agreed:

***[RESPONDENT*]  
a [*State of Formation*] [*Entity Type*]**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

**EXHIBIT A**

TERM SHEET

1. Note that this amount is the product of $3.00/kW multiplied by, as applicable, the Guaranteed Capacity, the Storage Capacity, or the sum of the Guaranteed Capacity and the Storage Capacity for renewable energy resources that are paired with energy storage resources, as set forth in Respondent’s Offer. [↑](#footnote-ref-1)